

**Sievert Electrical Company Division of Newgard
and Local Union 134, International Brotherhood
of Electrical Workers, AFL-CIO. Case
13-CA-32481**

August 30, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

Upon a charge filed by the Union on May 6, 1994 and amended on May 11, 1994, the General Counsel of the National Labor Relations Board issued a complaint on June 10, 1994, against Sievert Electrical Company Division of Newgard, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 1, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On August 4, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 12, 1994, notified the Respondent that unless an answer were received by July 19, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Mount Prospect, Illinois, has been engaged in electrical contracting. During the calendar year preceding issuance of the complaint, the Respond-

ent purchased and received at its Mount Prospect, Illinois, facility, goods valued in excess of \$50,000 directly from points outside the State of Illinois and performed services valued in excess of \$50,000 to other enterprises within the State of Illinois, which enterprises meet the Board's jurisdictional standards other than indirect inflow or indirect outflow.

At all material times, the Electrical Contractors' Association of the City of Chicago, Inc. (the Association) has been an organization composed of various employers, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with the Union. The Respondent has been an employer-member of the Association and has authorized it to represent it in negotiating and administering collective-bargaining agreements with the Union. During the year preceding issuance of the complaint, the employer-members of the Association, including the Respondent and Service Electric Co., have collectively purchased and received at their Illinois facilities goods valued in excess of \$50,000 directly from points outside of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, that the employer-members of the Association, including the Respondent, are also employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the Association and the Union have been parties to a collective-bargaining agreement, effective from June 1, 1990, through June 5, 1994 (the Agreement). The employees of the Respondent covered by the Agreement, who perform the work described in the Scope of Work clause of the Agreement (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since at least May 19, 1993, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then has been recognized as such representative by the Respondent. This recognition has been embodied in a letter of assent dated May 19, 1993, and in the Agreement. At all times since May 19, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since January 1994, the Respondent has failed and refused to adhere to the terms and conditions of the Agreement by failing to remit contributions to the Electrical Insurance Trustees and to the National Electrical Benefit Fund as required by the terms of the

Agreement. The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that Respondent has violated Section 8(a)(5) and (1) by failing, since January 1994, to make contractually required payments to the Electrical Insurance Trustees and to the National Electrical Benefit Fund, we shall order the Respondent to honor the terms of the 1990-1994 collective-bargaining agreement and make whole its unit employees by making all payments that have not been made since January 1994 and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d. 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970) enf'd. 444 F.2d. 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Sievert Electrical Company Division of Newgard, Mount Prospect, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 134, International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive bargaining representative of the unit employees by failing and refusing to remit con-

tractually required contributions to the Electrical Insurance Trustees and to the National Electrical Benefit Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the 1990-1994 collective-bargaining agreement with the Union, and make whole the unit employees by making all required contributions to the Electrical Insurance Trustee and to the National Electrical Benefit Fund retroactive to January 1994 and by reimbursing employees for any expenses ensuing from the failure to make the required payments, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Mount Prospect, Illinois, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 30, 1994

James M. Stephens, Member

Dennis M. Devaney, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Agreement. The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

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REMEDY

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APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Local 134, International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive collective-bargaining representative of the unit employees by failing to remit contributions to the Electrical Insurance Trustees and to the National Electrical Benefit Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms and conditions of the 1990-1994 collective-bargaining agreement with the Union and WE WILL make whole unit employees by making all contributions to the Electrical Insurance Trustees and to the National Electrical Benefit Fund that we have failed to make since January 1994 as required by the collective-bargaining agreement, and by reimbursing employees for any expenses ensuing from our failure to make the required contributions, with interest.

SIEVERT ELECTRICAL COMPANY DIVI-
SION OF NEWGARD